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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 JAVON MIGUEL,

Case No. 2:18-cv-02111-RFB-BNW

6 Petitioner,

7 v.

**ORDER**

8 JERRY HOWELL, et al.,

9 Respondents.

10 This represented habeas matter comes before the Court on Petitioner Javon Miguel's  
11 Motion to Dismiss in Part (ECF No. 30).

12 On September 16, 2019, the Court found the petition in this action to be mixed, containing  
13 both exhausted and unexhausted claims. (ECF No. 29). The Court informed Miguel of three  
14 options: (1) file a Motion to Dismiss seeking partial dismissal of only the unexhausted claims;  
15 (2) file a Motion to Dismiss the entire petition without prejudice in order to return to state court to  
16 exhaust the unexhausted claims; and/or (3) file a motion for other appropriate relief, such as a  
17 Motion for a Stay and Abeyance asking this Court to hold his exhausted claims in abeyance while  
18 he returns to state court to exhaust the unexhausted claims. (Id.)

19 Miguel's motion asks the Court to dismiss his unexhausted claims without prejudice:  
20 Grounds 1, 3, 4, and 6, as well as the part of Ground 5 alleging perjury and a due process violation.  
21 Miguel will therefore pursue the exhausted claims: Ground 2 and the part of Ground 5 alleging  
22 ineffective assistance of counsel. Respondents do not oppose the Motion. (ECF No. 31.)

23 **IT IS THEREFORE ORDERED:**

- 24 1. Petitioner Javon Miguel's Motion to Dismiss in Part (ECF No. 30) is **GRANTED**.  
25 2. Grounds 1, 3, 4, and 6, as well as the part of Ground 5 raising allegations of perjury  
26 and a due process violation are **DISMISSED WITHOUT PREJUDICE** as  
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unexhausted and by Miguel's request.

3. Respondents will have sixty (60) days to answer the remaining claims of the petition in this case: Ground 2 and the part of Ground 5 alleging ineffective assistance of counsel.
4. In the Answer, Respondents must specifically cite to and address the applicable state court written decision and state court record materials, if any, regarding each claim within the response as to that claim.
5. Miguel will have sixty (60) days following service of the Answer to file and serve a reply brief.
6. Any additional state court record and related exhibits must be filed in accordance with LR IA 10-3 and LR IC 2-2 and include a separate index identifying each additional exhibit by number or letter. The index must be filed in CM/ECF's document upload screen as the base document to receive the base docket number (*e.g.*, ECF No. 10). Each exhibit will then be filed as "attachments" to the base document—the index—to receive a sequenced sub-docket number (*e.g.*, Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF No. 10-3), and so forth). If the exhibits will span more than one filing, the base document in each successive filing must be either a copy of the index or volume cover page. See LR IC 2-2(a)(3)(A).
7. A paper copy of any exhibits over fifty pages—for this case—must be delivered to the Las Vegas Clerk's Office and addressed to the attention of "Staff Attorney." Paper copies must be (i) file-stamped copies, bearing the document number assigned by the CM/ECF system, (ii) securely bound on the left side to display the document number, and (iii) tabbed to display exhibit numbers or letters on the right side or bottom of the copies. See LR IA 10-3(i); LR IC 2-2(g).

DATED this 17<sup>th</sup> day of December, 2019.

RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE